

§ 718.4

VA, or the Personal Effects Distribution Center at Oakland, CA, for a period of two years from the date of death of the member. At the expiration of the two-year period such effects will be sold.

(R.S. 161, sec. 5031, 70A Stat. 278, as amended; 5 U.S.C. 22, 10 U.S.C. 5031, 50 U.S.C. App. 1013-1015; Pub. L. 89-554, 80 Stat. 379 (5 U.S.C. 301))

[26 FR 12659, Dec. 29, 1961, as amended at 37 FR 6472, Mar. 30, 1972; 44 FR 22456, Apr. 16, 1979]

§ 718.4 Delegations.

The Secretary of the Navy has delegated to the Director, Personal Services Division, Bureau of Naval Personnel with respect to personnel in the Navy, and to the Head, Personal Affairs Branch Manpower Department (Code MSPA), United States Marine Corps, with respect to personnel in the Marine Corps, authority to make all determinations to administer the act.

(Pub. L. 89-554, 80 stat. 379 (5 U.S.C. 301))

[17 FR 5391, June 14, 1952, as amended at 19 FR 7959, Dec. 2, 1954; 44 FR 22456, Apr. 16, 1979]

PART 719—REGULATIONS SUPPLEMENTING THE MANUAL FOR COURTS-MARTIAL

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32 CFR Ch. VI (7-1-12 Edition)

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AUTHORITY: 3 U.S.C. 301; 5 U.S.C. 301; 10 U.S.C. 815, 5013, 5148; 32 CFR 700.206 and 700.1202.

Subparts A-B [Reserved]

Subpart C—Trial Matters

§ 719.112 Authority to grant immunity from prosecution.

(a) *General.* In certain cases involving more than one participant, the interests of justice may make it advisable to grant immunity, either transactional or testimonial, to one or more of the participants in the offense in consideration for their testifying for the Government or the defense in the investigation and/or the trial of the principal offender. Transactional immunity, as that term is used in this section, shall mean immunity from prosecution for any offense or offenses to which the compelled testimony relates. Testimonial immunity, as that term is used in this section, shall mean immunity from the use, in aid of future prosecution, of testimony or other information compelled under an order to testify (or any information directly or indirectly derived from such testimony or other information). The authority to grant either transactional or testimonial immunity to a witness is reserved to officers exercising general court-martial jurisdiction. This authority may be exercised in any case whether or not formal charges have been preferred and whether or not the matter has been referred for trial. The approval of the Attorney General of the United States on certain orders to testify may be required, as outlined below.

(b) *Procedure.* The written recommendation that a certain witness be granted either transactional or testimonial immunity in consideration for testimony deemed essential to the Government or to the defense shall be forwarded to an officer competent to convene a general court-martial for the witness for whom immunity is requested, *i.e.*, any officer exercising general court-martial jurisdiction. Such

recommendation will be forwarded by the trial counsel or defense counsel in cases referred for trial, the pretrial investigating officer conducting an investigation upon preferred charges, the counsel or recorder of any other fact-finding body, or the investigator when no charges have yet been preferred. The recommendation shall state in detail why the testimony of the witness is deemed so essential or material that the interests of justice cannot be served without the grant of immunity. The officer exercising general court-martial jurisdiction shall act upon such request after referring it to his staff judge advocate for consideration and advice. If approved, a copy of the written grant of immunity must be served upon the accused or his defense counsel within a reasonable time before the witness testifies. Additionally, if any witness is expected to testify in response to a promise of leniency, the terms of the promise of leniency must be reduced to writing and served upon the accused or his defense counsel in the same manner as a grant of immunity.

(c) *Civilian witnesses.* Pursuant to 18 U.S.C. 6002 and 6004, if the testimony or other information of a civilian witness at a court-martial may be necessary in the public interest, and if the civilian witness has refused or is likely to refuse to testify or provide other information on the basis of a privilege against self-incrimination, then the approval of the Attorney General of the United States, or his designee, must be obtained prior to the execution or issuance of an order to testify to such civilian witness. The cognizant officer exercising general court-martial jurisdiction may obtain the approval of the Attorney General in such a circumstance by directing a message or letter requesting the assistance of the Judge Advocate General (Code 20) in the form prescribed in paragraph (e) of this section.

(d) *Cases involving national security.* In all cases involving national security or foreign relations of the United States, the cognizant officer exercising general court-martial jurisdiction shall forward any proposed grant of immunity to the Judge Advocate General for the purpose of consultation with the De-

partment of Justice. See section 0126 of the Manual of the Judge Advocate General regarding relations between the Departments of Defense and Justice. The cognizant officer exercising general court-martial jurisdiction may obtain approval by the Attorney General of a proposed grant of immunity by directing a letter requesting the assistance of the Judge Advocate General (Code 20) in the form prescribed in paragraph (e) of this section.

(e) *Content of immunity requests.* In all cases in which approval of the Attorney General of the United States is required prior to the issuance of a grant of immunity, whether under paragraph (c) or (d) of this section, the cognizant officer exercising general court-martial jurisdiction shall forward by message or letter the proposed order to testify and grant of immunity to the Judge Advocate General (Code 20). The order to testify should be substantially in the form set forth in appendix A-1-i(3) of the Manual of the Judge Advocate General. Requests for assistance shall be in writing, should allow at least three weeks for consideration, and must contain the following information:

- (1) Name, citation, or other identifying information of the proceeding in which the order is to be used.
- (2) Name of the witness for whom the immunity is requested.
- (3) Name of the employer or company with which a witness is associated or the military unit or organization to which a witness is assigned.
- (4) Date and place of birth, if known, of the witness.
- (5) FBI or local police file number, if any, and if known.
- (6) Whether any State or Federal charges are pending against the witness and the nature of the charges.
- (7) Whether the witness is currently incarcerated, under what conditions, and for what length of time.
- (8) A brief resume of the background of the investigation or proceeding before the agency or department.
- (9) A concise statement of the reasons for the request, including:
 - (i) What testimony the witness is expected to give;
 - (ii) How this testimony will serve the public interest;

(iii) Whether the witness:

(A) Has invoked the privilege against self-incrimination; or

(B) Is likely to invoke the privilege;

(iv) If paragraph (e)(9)(iii)(B) of this section is applicable, then why it is anticipated that the prospective witness will invoke the privilege.

(10) An estimate as to whether the witness is likely to testify in the event immunity is granted.

(f) *Post-testimony procedure.* After a witness immunized in accordance with paragraphs (c) and (d) of this section has testified, the following information should be provided to the United States Department of Justice, Criminal Division, Immunity Unit, Washington, DC 20530, via the Judge Advocate General (Code 20).

(1) Name, citation, or other identifying information, of the proceeding in which the order was requested.

(2) Date of the examination of the witness.

(3) Name and residence address of the witness.

(4) Whether the witness invoked the privilege.

(5) Whether the immunity order was used.

(6) Whether the witness testified pursuant to the order.

(7) If the witness refused to comply with the order, whether contempt proceedings were instituted, or are contemplated, and the result of the contempt proceeding, if concluded. A verbatim transcript of the witness' testimony, authenticated by the military judge, should be provided to the Judge Advocate General at the conclusion of the trial. No testimony or other information given by a civilian witness pursuant to such an order to testify (or any information directly or indirectly derived from such testimony or other information) may be used against him in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

(g) *Review.* Under some circumstances, the officer granting immunity to a witness may be disqualified from taking reviewing action on the record of the trial before which the witness granted immunity testified. A successor in command not partici-

pating in the grant of immunity would not be so disqualified under those circumstances.

(h) *Form of grant.* In any case in which a military witness is granted transactional immunity, the general court-martial convening authority should execute a written grant, substantially in the form set forth in appendix section A-1-i(1) of the Manual of the Judge Advocate General. In any case in which a military witness is granted testimonial immunity, the general court-martial convening authority should execute a written grant substantially in the form set forth in appendix section A-1-i(2) of the Manual of the Judge Advocate General.

[56 FR 57803, Nov. 14, 1991]

§§ 719.113–719.114 [Reserved]

§ 719.115 Release of information pertaining to accused persons; spectators at judicial sessions.

(a) *Release of information—(1) General.* There are valid reasons for making information available to the public concerning the administration of military justice. The task of striking a fair balance among the protection of individuals accused of offenses, improper or unwarranted publicity pertaining to their cases, public understanding of the problems of controlling misconduct in the military service, and the workings of military justice requires the exercise of sound judgment by those responsible for administering military justice and by representatives of the press and other news media. At the heart of all guidelines pertaining to the furnishing of information concerning an accused or the allegations against him is the mandate that no statements or other information shall be furnished to news media for the purpose of influencing the outcome of an accused's trial, or which could reasonably be expected to have such an effect.

(2) *Applicability of regulations.* These regulations apply to all persons who may obtain information as the result of duties performed in connection with the processing of accused persons, the investigation of suspected offenses, the imposition of nonjudicial punishment, or the trial of persons by court-martial. These regulations are applicable